A-570-872
Investigation
Public Document
IA:III:IX: CB

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Joseph A. Spetrini
Deputy Assistant Secretary
for Import Administration, Group III

SUBJECT: Issues and Decision Memorandum for the Less Than Fair Value Investigation of Certain Cold-Rolled Carbon Steel Flat Products from the People's Republic of China: January 1, 2001 through June 30, 2001

SUMMARY:

We have analyzed the briefs and rebuttals of interested parties in the less than fair value ("LTFV") investigation of Certain Cold-Rolled Carbon Steel Flat Products from the People's Republic of China. As a result of our analysis, we have made changes from the Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Certain Cold Rolled Carbon Steel Flat Products from the People's Republic of China, 67 FR 31235 (May 9, 2002) ("Preliminary Determination"). The specific calculation changes for Pangang Group International Economic & Trading Corp. ("Pangang") can be found in Analysis for the Final Determination of Cold-Rolled Carbon Steel Flat Products from the People's Republic of China: Pangang Group International Economic & Trading Corp ("Pangang Final Analysis Memorandum"), dated September 23, 2002.

As noted below, the Department has determined to apply total adverse facts available for the one participating respondent, Pangang, and to the PRC-wide entity. The Department finds it unnecessary to address the comments raised by the parties that do not pertain to the Department's total adverse facts available decision.

The Department recognizes that the respondent, Pangang, raised the following issues: (1) U.S. Sales through Third Parties; (2) Self- Produced Energy and Gas Factors; (3) Valuation of Oxygen, Nitrogen, and Argon; (4) Valuation of Electricity; (5) Valuation of Iron Ore; (6) Valuation of Aluminum; (7) Valuation of Steam Coal; (8) Valuation of SG&A, Interest and Profit; (9); Inland Freight Distance; and (10) SG&A Ratio Clerical Errors. However, based on

our determination to use total adverse facts available, the Department finds it unnecessary to address these comments.

The Department recognizes that petitioners (Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation) raised the following issues: (1) U.S. Sales through Third Parties; (2) Valuation of Oxygen, Nitrogen, and Argon; (3) Valuation of Hydrogen Gas; (4) Treatment of Defective Hot-Rolled Sheets; (5) Valuation of Iron Ore; (6) Valuation of Aluminum; (7) Valuation of Electricity; (8) Valuation of Coal Used to Produce Coke; (9) Valuation of Water; (10) Valuation of Recycled Iron Angle; and (11) Valuation of SG&A, Interest and Profit. However, based on our determination to use total adverse facts available, the Department finds it unnecessary to address these comments.

We recommend that you approve the position we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this investigation:

I. Changes from the Preliminary Determination

II. Issues

Comment 1: Application of Adverse Facts Available
Comment 2: U.S. Sales through Third Parties
Comment 3: Self- Produced Energy and Gas Factors
Comment 4: Valuation of Oxygen, Nitrogen, and Argon
Comment 5: Valuation of Electricity
Comment 6: Valuation of Hydrogen Gas
Comment 7: Treatment of Defective Hot-Rolled Sheets
Comment 8: Valuation of Iron Ore
Comment 9: Valuation of Aluminum
Comment 10: Valuation of Coal Used to Produce Coke
Comment 11: Valuation of Steam Coal
Comment 12: Valuation of Water
Comment 13: Valuation of Recycled Iron Angle
Comment 14: Valuation of SG&A, Interest and Profit
Comment 15: Inland Freight Distance
Comment 16: SG&A Ratio Clerical Errors

DISCUSSION OF THE ISSUES:

I. Changes from the Preliminary Determination

We have made the following adjustments to the preliminary margin calculation for Pangang:

- We relied on corrected factual data submitted by Pangang in its May 20, 2002,

submission which were verified by the Department.

- We corrected a ministerial error in our calculation of selling, general, and administrative expenses ("SG&A"). See Memorandum to Edward Yang: Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from the People's Republic of China: Analysis of Allegation of Ministerial Errors, dated May 17, 2002 ("Ministerial Error Memo").

- As a result of verification, we found that Pangang uses hydrochloric acid for pickling the cold-rolled. We valued hydrochloric acid using surrogate valuation information on the record of this investigation at the time of the preliminary determination.

- As a result of verification, we found that Pangang had no market economy purchases of lump iron ore during the POI. We valued the freight cost for lump iron ore using the supplier information provided by Pangang.

- As a result of verification, we revised the distance between Pangang and the port of export, and revised our calculation of foreign inland freight accordingly.

- As a result of verification, we revised the distance between Pangang and the nearest sea port, and revised our freight calculations for the material inputs accordingly.

II. Issues

Comment 1: Application of Adverse Facts Available

Petitioners' Argument:

Petitioners argue that the Department should apply adverse facts available given the Department's finding at verification that Pangang failed to report a significant percentage of its U.S. sales of the subject merchandise. See Verification of Sales and Factors of Production for Pangang Economic and Trading Group Corporation ("Pangang") in the Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from the People's Republic of China ("PRC") (June 26, 2002) (Verification Report) at 10. Petitioners state that in its questionnaire responses Pangang reported that all of its U.S. sales were pursuant to short-term contracts and that it used invoice date as the date of sale. Moreover, petitioners explain that in response to the Department's February 11, 2002, request to revise the U.S. sales listing to include all those U.S. sales for which contracts were finalized during the POI, Pangang stated that it had "reported all relevant information about the invoice dates and contracts dates during the POI." See Pangang's February 22, 2002, Supplemental Questionnaire Response at 2. Petitioners note that both the contract date and invoice date of the unreported U.S. sale fall within the period of investigation ("POI").

Citing section 776(a) of the Tariff Act of 1930, as amended ("Act"), petitioners maintain that if a respondent fails to provide complete and accurate information, the Department may disregard all or part of what was provided and apply facts available. Petitioners claim that where the response

is substantially deficient and cannot be used to calculate a reliable margin, the Department will reject the respondent's submissions in its entirety. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from South Africa, 66 FR 37002, 37004 (July 16, 2001) ("Hot-Rolled from South Africa"); Petroleum Wax Candles from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 66 FR 14545, 14546 (March 13, 2001); and Certain Cased Pencils from the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 66 FR 1638, 1640-41 (January 9, 2001) ("Cased Pencils from China"). Petitioners note that in Cased Pencils from China, the Department applied total adverse facts available where at verification, it was discovered that respondent failed to include sales to a third-country that were destined to the United States. Petitioners allege that as in Cased Pencils from China, Pangang's U.S. sales response is grossly deficient and cannot be used to determine Pangang's dumping margin. Moreover, petitioners maintain that respondent cannot rely on section 782(e) to save the deficient information that is on the record because the information was not submitted by the deadline, the unreported information could not be verified, information on the record for U.S. sales is grossly incomplete, Pangang did not act to the best of its ability, and the information cannot be used without undo difficulty as a significant quantity of U.S. sales is not on the record.

Citing the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (1994) at 843, petitioners state that when using facts available, the Department may draw an adverse inference where the respondent "has failed to cooperate by not acting to the best of its ability." Petitioners maintain that the Department need not find affirmative bad faith or intentional non-cooperation before drawing and adverse inference. See Mannesmann-Werke AG v. United States, 120 F. Supp. 2d 1075, 1083 (CIT 2000). Citing Acciai Speciali Terni S.p.A. v. United States, 142 F. Supp. 2d 969, 993 (CIT 2000), petitioners state that where the record shows that the respondent could have provided the required information, but failed to do so, an adverse inference is proper. Petitioners note that in this case, the Department directed Pangang to report all U.S. sales including U.S. sales for which contracts were finalized during the POI. They argue that since the contract date for the missing sale was within the POI and at all times available to Pangang, Pangang could have and should have reported the sale, but failed to do so. Petitioners maintain that as in Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61747 (November 19, 1997) in which the Department found that the respondent did not cooperate to the best of its ability where unreported U.S. sales were first discovered at verification, Pangang also did not act to the best of its ability to provide readily available information concerning U.S. sales. Therefore, petitioners argue that the Department should apply total adverse facts available. As adverse facts available, petitioners request that the Department apply the higher of the highest calculated margin on any sale or the margin from the preliminary determination. Petitioners state that in the event that the Department determines not to apply total facts available, the Department should apply partial adverse facts available for the quantity of U.S. merchandise that Pangang failed to report. Again, petitioners request that as adverse facts available, the Department apply the higher of the highest calculated margin on any sale or the margin from the preliminary determination

Respondent's Argument:

Pangang argues that the application of total adverse facts available is not warranted by the facts of this case because Pangang has been fully cooperative with the Department's request for information and its omission was nothing more than an inadvertent error. Pangang concedes that, given that an error was made and Pangang did not have the opportunity to correct the information, the Department may resort to facts available with respect to the transaction at issue. However, Pangang states that prior to drawing an adverse inference when applying facts available, under section 776(b) of the Act, the Department must make an additional finding that "an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information." See Ferro Union v. United States, 44 F. Supp 2d 1310, 1329 (CIT 1999). Citing Krupp Thyssen Nirosta Gmbh v. United States, No. 99-08-00550, Slip Op. 2001-84, 2001 WL 812167, *9 (CIT July 9, 2001) (citing Nippon Steel Corp. v. United States, 118 F. Supp. 2d 1366 (CIT 2000) ("Nippon I")), Pangang explains that the courts have repeatedly ruled that the statute requires "more than an inadvertent error on the part of the respondent" to permit the use of an adverse inference." Moreover, Pangang maintains that where the failure to report sales was inadvertent, the courts have overruled the Department's decision to use total adverse facts available. Pangang notes that in Nippon Steel Corp. v. United States, 146 F. Supp. 2d 835, 840 (CIT 2001) ("Nippon II") the Court stated that "In the absence of additional evidence supporting a finding that a respondent 'failed to cooperate by not acting to the best of its ability,' where a claim of inadvertence is at issue, the simple fact of a respondent's failure to report information within its control does not warrant an adverse inference." Pangang argues that additional probative factors supporting an adverse inference should exhibit a "pattern of unresponsiveness" or strongly indicate "a specific intent on the part of the respondent to evade the Department's requests for information." See Nippon II (citing Mannesmann-Werke AG v. United States, 120 F. Supp. 2d 1075, 1083 (CIT 2000)).

Pangang claims that in this case there is no evidence that Pangang deliberately failed to cooperate by not acting to the best of its ability, and that Pangang responded to all requests for information on a timely basis to the best of its ability. Pangang notes that consistent with section 351.401(i) of the Department's regulations, Pangang reported date of invoice as the date of sale because the sale is recorded in its accounting records on the date of invoice. Pangang adds that, notwithstanding the Department's supplemental questionnaire, the Department has not formally rejected this date of sale. Pangang explains that at verification, the Department found that Pangang erroneously recorded the invoice at issue, which also included non-subject merchandise, in its accounting records as dated outside the POI. See Pangang Verification Report at 11. As a result of this error, Pangang states that the invoice was left out when Pangang manually compiled its sales listing and escaped Pangang's subsequent review of contract dates. Pangang claims that its immediate and unequivocal cooperation to the Department officials' request to review this invoice and the relevant contract demonstrates that Pangang's error was not an attempt to evade the Department's request for information. Noting that with the exception of the invoice at issue, Pangang's sales and factors of production data reported were verified without any discrepancies, Pangang characterizes petitioners' argument as unreasonable and misleading and urges the Department to apply neutral facts available to the sale at issue. Pangang notes that in Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary

Results and Preliminary Rescission in Part of Antidumping Duty Administrative Review, 67 FR 45467, 45472 (July 9, 2002) ("Pipe Fittings from Taiwan") as facts available, the Department applied the average positive margin to the total value of the U.S. market sales that the respondent failed to report. Pangang states that in the event that the Department decides to draw an adverse inference, the adverse facts available should be limited to the sale at issue given that there are no problems with the remaining data and Pangang has been fully cooperative during the entirety of the proceeding.

Department's Position:

We agree with petitioners, and have determined to apply total adverse facts available to Pangang for the final determination. As Pangang itself has noted, the use of facts available in this case is warranted under section 776(a) of the Act because of Pangang's failure to report complete U.S. sales information. Specifically, at verification the Department found that Pangang failed to report a significant percentage of its U.S. sales volume of subject merchandise during the POI. See Verification Report at 1 and 10. Thus, the central issue here is whether the application of facts available for the unreported sales quantity should be neutral[1] or adverse.

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870. Furthermore, "affirmative evidence of bad faith on the part of the respondent is not required before the Department may make an adverse inference." See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27340 (May 19, 1997); and see also Mannesmann-Werke AG v. United States, 120 F. Supp. 2d 1075, 1083 (CIT 2000). Also, as Pangang notes, in Nippon I and Nippon II, the CIT has found that inadvertence is not sufficient grounds for the application of an adverse inference.

In this instance, we do not find that the evidence on the record establishes that Pangang's failure to report a significant percentage of its U.S. sales volume was the result of an inadvertent error. Pangang claims that it has been fully cooperative with the Department's requests for information, and cites its questionnaire and supplemental questionnaire responses. However, in a supplemental questionnaire dated February 11, 2002, the Department noted that based on the information submitted on the record, "it is possible that the Department may determine date of contract to be a more appropriate sale date than is the date of invoice..." and requested that Pangang "revise your U.S. sales listing to include all those sales for which contracts were

[1] We note that in Pipe Fittings from Taiwan, the case cited by Pangang in support of their argument that the Department apply neutral facts available, the number of unreported U.S. sales was a "small number" and respondent identified these sales to the Department at the beginning of the U.S. sales verification. See Pipe Fittings from Taiwan 67 FR at 45471-72. Thus, this citation is inapposite.

finalized during the period of investigation ("POI")." See Supplemental Questionnaire, dated February 11, 2002, at Question 3. In response, Pangang stated that it had "reported all relevant information about the invoice dates and contract dates during the POI." See Pangang's February 22, 2002, submission at 2. However, at verification, the Department found that for the unreported sales volume at issue, the contract date was during the POI, and therefore Pangang's statement was inaccurate. See Verification Report at 10. Thus, given that the contract date for the unreported sales volume at issue was plainly within the POI and at all times available to Pangang, Pangang could have reported the sales at issue but did not do so.

Moreover, notwithstanding Pangang's failure to accurately respond to the Department's request that Pangang report all sales for which contracts were finalized during the POI, other record evidence also establishes that Pangang failed to acted to the best of its ability in preparing and reporting to the Department its U.S. sales information on its U.S. sales of subject merchandise during the POI. See also Memorandum: Determination of Facts Available for Pangang Economic and Trading Group Corporation in Certain Cold-Rolled Carbon Steel Flat Products from the People's Republic of China, September 23, 2002 ("Facts Available Memo for Pangang"). The unreported U.S. sales information was uncovered by the Department at verification during its review of the completeness of the U.S. sales listing prepared by Pangang. Because Pangang had compiled its U.S. sales listing manually, in order to confirm that all sales were properly included, we selected sales from the cold-rolled steel sales listing and requested to review the invoices. See Verification Report at 10. As Pangang's U.S. sales listing was compiled manually, a manual review of invoices was the only method to determine that no sales were improperly excluded.[2] The record shows that there was a limited number of sales of cold-rolled steel to all export markets, including the United States, during calendar year 2001. Given the limited number of cold-rolled steel sales to all markets during 2001 (the last six months of which are not part of the POI), the Department was able to manually check the invoices for a large portion of all export sales of cold-rolled steel in 2001 (not just those destined to the United States) to ensure that any given sale was properly excluded based on country of destination, date of invoice (which Pangang had reported as date of sale), or type of merchandise. This completeness check took a relatively short amount of time. It was incumbent upon Pangang to have performed the same thorough, yet not time-consuming, analysis in preparing its U.S. sales database in response to the Department's Antidumping Questionnaire and in preparing for verification. Through the transmittal of the Verification Outline, which was issued a week prior to the beginning of verification, the Department clearly put Pangang on notice that in its completeness tests, the Department would be reviewing such sales documentation as hard copies of invoice files and that Pangang should "{b}e prepared to demonstrate that sales not reported are properly not subject to this investigation." See Letter to Pangang Group International Economic & Trading Corp., dated May 20, 2002 ("Verification Outline"). However, Pangang failed to perform the necessary completeness tests to ensure that its U.S. sales listing was

[2] In Krupp Thyssen Nirosta Gmbh v. United States, where the court found that there was not substantial evidence that respondent did not act to the best of their ability, the database was constructed through a program and the resultant database error was only detectable through a manual trace. Thus, this case is not on point regarding databases that are compiled manually.

complete and accurate, despite the short amount of time necessary for that check, and, consequently, did not present the unreported sales volume during the preparation of its questionnaire and supplemental questionnaire responses nor did Pangang present the unreported sales volume to the Department at the beginning of verification.

Given that the contract date for the unreported sales volume at issue was within the POI and Pangang failed to perform the necessary completeness tests to ensure that its U.S. sales listing was accurate, we find that this constitutes a failure on the part of Pangang to act to the best of its ability. See also Facts Available Memo for Pangang.

Where the response is substantially deficient and cannot be used to calculate a reliable margin, the Department will reject the respondent's submissions in its entirety. We determine that the omission of such a large percent of the U.S. sales from Pangang's U.S. sales listing results in a response that is substantially deficient. In cases where the respondent has failed to report a substantial proportion of its U.S. sales, the Department has applied total facts available to determine the margin of dumping. See, e.g., Cased Pencils from China and Hot-Rolled Steel from South Africa. In Cased Pencils from China, the Department found that the respondent had "failed to report a significant quantity of U.S. sales and thus significantly impeded the review." See Cased Pencils from China 66 FR at 1648.

In this case, we have two margin rates on the record (the estimated petition rate and the preliminary rate). It would be inappropriate to assign Pangang the lower rate from the petition because the Department applies adverse facts available "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870. Moreover, while we recognize that Pangang has placed additional information on the record since the preliminary determination and both Pangang and petitioners have provided comments on our preliminary margin calculation, we do not find it appropriate to consider this data and these comments to adjust the preliminary margin calculation. Because of Pangang's failure to report a significant volume of its U.S. sales of subject merchandise, the U.S. sales database is incomplete. We do not know what net effect the inclusion of this unreported sales information or the consideration of parties' comments would have on the margin. The preliminary rate represents a calculated rate based on the information available to the Department at the time of its determination. Accordingly, we have not adjusted the preliminary rate other than to correct for the ministerial error which the Department stated it would address in the final determination (see Ministerial Error Memo) and for verified corrections submitted by Pangang. No corroboration of the corrected preliminary rate is necessary because we are relying on information obtained in the course of the investigation, rather than secondary information.

Accordingly, as total adverse facts available, we are applying the calculated margin from the Preliminary Determination, adjusted to correct a clerical error and certain data, (105.35 percent) because use of the only other margin on the record, the initiation margin, would provide a more favorable result for non-cooperation, contrary to the SAA. See also Facts Available Memo for Pangang.

Comment 2: U.S. Sales through Third Parties

Respondent's Argument:

Pangang argues that the Department should account for all forms of payment that Pangang received for its U.S. sales of the subject merchandise made through third parties. Pangang notes that in the Preliminary Determination, the Department decided to use "the price from Pangang Group to the unaffiliated party as this price represents the first sale to an unaffiliated party who has knowledge that the sale is destined to the United States." See Preliminary Calculation Memorandum at 2. In doing so, Pangang claims that the Department did not account for the fact that Pangang's payment also included the provision of input A which is consumed in the production of subject merchandise.[3] Pangang maintains that as a result of this exclusion, the dumping margins for the sales at issue were overstated significantly.

Pangang claims that petitioners have erroneously argued that Pangang has attempted to revise its gross unit prices of the sales at issue. Pangang notes that at verification, the Department verified for the sales at issue that the payment received by Pangang included a certain dollar amount as well as the provision of input A. See Verification Report at 6; see also Pangang Verification Exhibits 5a, 5b, and 7a. Specifically, Pangang states that "the Department confirmed that the {input A} imported through the *** was consumed in the production of the finished goods that were exported under the ***." See Verification Report at 5-6. Citing the Verification Report at 5, Pangang maintains that for Pangang, the provision of input A represented the core of the transactions negotiated with party A. According to Pangang, because the fee charged to party A accounted for the fact that party A was entitled to input A and the steel produced from the input A, it only represented payment for the services performed by Pangang and did not include the provision of input A. Thus, Pangang argues that its factors of production and the normal value for the sales at issue should only include the factors consumed during the relevant stages. To this end, Pangang maintains that the Department should deduct from normal value the value of the input A factor for those sales transactions at issue. Pangang suggests that the Department create two separate normal values for the two different types of sales, where the input A factor is deleted from calculation of the normal value for the sales transactions at issue.

Petitioners' Argument:

Petitioners argue that in its Preliminary Determination the Department properly accounted for the sales at issue and nothing that was submitted subsequent to the Preliminary Determination or disclosed at verification detracted from the facts as stated by the Department. As an initial matter, petitioners urge the Department to reject Pangang's revised gross unit prices for the sales at issue which were submitted in Pangang's May 20, 2002, submission. The May 20, 2002, database reports in the gross unit price field the price paid by the U.S. importer, rather than the price paid to Pangang. Petitioners note that under section 772(a), U.S. price is the price charged to the first unaffiliated purchaser for sale in the United States. Petitioners explain that the record demonstrates that the price paid by the U.S. importer was not paid to Pangang, but to party A.

---

[3] Respondent has requested business proprietary treatment for the details of the transaction at issue. The proprietary version of interested parties' arguments can be found in their case briefs of July 12, 2002.

In their rebuttal comments, petitioners explain that Pangang has submitted varying claims concerning how the price and/or margin for the sales at issue should be calculated. Petitioners note that Pangang first argued that the Department should add the price of input A to the dollar amount received by Pangang to determine the U.S. sales price. Petitioners state that the Department properly rejected this claim at the Preliminary Determination. See Preliminary Determination 67 FR at 31238. Next, petitioners allege that in its May 20, 2002, submission Pangang asserted that the U.S. price should be the price of the merchandise in the transaction between party A and the U.S. importer. As explained above, petitioners believe that Pangang's claim is contrary to the statute. Finally, petitioners state that in its case brief, Pangang argues that the Department should make a downward adjustment to normal value to account for the input A received by Pangang. Petitioners assert that Pangang is wrong that it was "paid" in input A. First, petitioners maintain that the record does not show that for the sales at issue, party A paid Pangang a certain dollar amount and a certain amount of input A per MT of finished subject merchandise. On the contrary, petitioners state that the sales documentation demonstrates that for the finished subject merchandise, Pangang receives a set dollar amount. Petitioners acknowledge that the sales documentation includes references to a ratio; however, citing to the invoice in question, petitioners maintain that this ratio is not part of the price for finished goods, and thus there is no factual basis upon which to adjust normal value to account for the fact that Pangang received input A from party A.

Petitioners also argue that the statute does not permit what Pangang is requesting. They state that there is no question that Pangang used the input A in the production of subject merchandise. Petitioners note that in non-market economy cases such as this, 773(c)(1) of the Act directs the Department to "determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise …" (emphasis added). Petitioners argue that since the input A was used to produce the subject merchandise, it must be included in the normal value regardless of the terms under which Pangang received the input and whether it paid for the input in full, in part, or not at all. Thus, petitioners conclude that the Department must reject Pangang's request for the Department to adjust the normal value to account for the provision of the input A.

Department's Position:

Because the Department has determined to apply total adverse facts available to Pangang as explained in Comment 1, we need not address this argument. See SAA at 892.

Comment 3: Self-Produced Energy and Gas Factors

Respondent's Argument:

Pangang argues that the Department's valuation of Pangang's self-produced electricity, oxygen, nitrogen and argon as finished products, rather than the valuation of the factors of production for those inputs, unfairly ignores Pangang's actual factors of production and its level of integration. Pangang claims that the two reasons cited by the Department for selecting this methodology do not represent a reasonable justification. First, Pangang challenges the Department's argument

that potential distortion exists in valuing the factors into the production of these energy and gas factors because the source in the Preliminary Determination for surrogate overhead, selling, general, and administrative expenses ("SG&A"), and profit ratios, TATA Steel ("TATA") and Steel Authority of India Limited ("SAIL"), self-produced only 60 percent and 54 percent, respectively, of their electricity. See Preliminary Determination 67 FR at 31239. Pangang states that because more than half of TATA's and SAIL's energy is self-produced, the potential for distortion is in fact greater when the surrogate ratios derived from TATA's and SAIL's financial data are applied to Pangang, which self-produced all of its electricity. Pangang notes that in the antidumping investigation of hot-rolled carbon steel flat products from the People's Republic of China, the Department was concerned that, because power is a fully loaded cost, TATA's financial ratio that includes in its denominator fully loaded energy costs should not be applied to the respondent's self-produced factors. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China, 66 FR 49632 (September 28, 2001) and accompanying Issues and Decision Memorandum at Comment 2 ("Hot-Rolled Steel from China"). Pangang argues that because the portion of the Indian companies' denominator which include "fully loaded energy costs" is smaller than the portion with self-produced energy, the application of this ratio to the electricity factor valued as purchased power overstates normal value.

Second, Pangang challenges the Department's claim in the Preliminary Determination that the valuation of the energy and gas factors would "add needless complications to our calculation of NV and lead to potentially erroneous results." See Preliminary Determination 67 FR at 31239. Pangang maintains that the valuation of these factors does not result in any increased administrative burden for the Department. Pangang claims that the Department verified all of Pangang's factors of production without discrepancy, and that the addition of the actual factors of production would be relatively simple entail only simple. Pangang states that it is unfair to ignore respondents' actual data in favor of surrogate information with significant impact in normal value for the sake of administrative convenience. Pangang alleges that under the Department's "faulty" logic, administrative convenience could result in Pangang's normal value being built up from semi-finished steel, rather than iron ore, or even being based on the Indian price for finished steel, rather than Pangang's own factors of production. Pangang maintains that under section 773(c) of the Act and section 351.408 of the Department's regulations, the Department is obligated to use the respondent's data without adjustments. Pangang holds that there is no justification for the Department to arbitrarily select inputs on an intermediate production level, and that the rejection of Pangang's own factors of production would amount to facts available in this case, which Pangang argues is not justified.

Pangang also argues that because it is a fully integrated producer, the production process for one material cannot be arbitrarily isolated from that of other materials. Specifically, Pangang explains that the production of electricity and the industrial gases consumes many of the by-products of the steel production process and cannot be separated from the steel production process. Pangang claims that because these inputs are either by-products or surplus inputs that are unavoidable in the steel production process, they are not comparable to any finished products that are sold in the market and cannot be valued as such. Pangang concludes that applying a surrogate value for these inputs significantly overstates the cost of producing the merchandise

and unfairly ignores Pangang's level of integration.

Petitioners' Argument:

Petitioners argue that the Department should continue to value electricity, oxygen, nitrogen, and argon as finished products. Citing Hot-Rolled Steel from China, petitioners maintain that the two reasons that the Department does not value the inputs used to manufacture electricity, oxygen, nitrogen, and argon is the potential for inaccuracies in valuing the individual components of the intermediary inputs and valuing the individual components is administratively unworkable because the Department "would have to conduct is essence two investigation, one into the production of the subject merchandise and another into the production of the inputs into certain factors." See Hot-Rolled Steel from China at Comment 2. Citing from Hot-Rolled Steel from China, petitioners state that valuing the individual inputs needed to produce the energy, without including all costs associated with the production of the energy, would "result in a less accurate calculation, not greater accuracy as implied by respondents." See id. Petitioners further argue that in Hot-Rolled Steel from China, the Department found that the respondents' proposed methodology would result in still other distortions in the calculations of the financial ratios if the surrogate's energy costs include the cost of purchased energy, which are "fully loaded costs", since the denominator in the calculations will be larger than if only self-generated electricity were to be included. See id. Petitioners note that in Structural Steel Beams from China, the Department also determined to value oxygen, nitrogen, and argon as finished products, notwithstanding the fact that the respondent self-produced the inputs. See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from the People's Republic of China, 67 FR 35479 (May 20, 2002) and accompanying Issues and Decision Memorandum at Comment 2 ("Structural Steel Beams from China"). Petitioners state that as in Hot-Rolled Steel from China, in the structural steel beams case the Department noted that "the respondent's methodology would add needless complications to our calculations of NV and lead to potentially erroneous results." See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams from the People's Republic of China, 66 FR 67197, 67201 (December 28, 2001) ("Structural Steel Beams from China Prelim").

Petitioners maintain the rationales relied upon by the Department in the above cases are fully applicable here. Petitioners note that the record indicates that both the Indian surrogates purchase a significant portion of the energy they consume. Petitioners assert that by valuing the factors of the intermediate energy inputs without including all relevant costs such as the financial and depreciation expenses and the SG&A associated with the assets used to produce the energy, the resulting values would be grossly understated. Petitioners claim that the values for the relevant associated costs cannot be determined, and thus an accurate value for self-produced energy cannot be achieved using Pangang's proposed methodology. Moreover, petitioners argue that Pangang's methodology would add needless complication to the Department's calculations since the Department would have to carry-out multiple investigations to value the inputs at the lowest level. Petitioners allege that Pangang is wrong when it suggest that the Department has already verified the factors of production for its energy inputs. Petitioners maintain that on the contrary, the verification report and accompanying exhibits demonstrate that the Department did

not verify the production of the intermediate inputs, but rather the consumption of the intermediate inputs in the production of the subject merchandise. See Verification Report at 13. Therefore, petitioners conclude that the Department should continue to value electricity, argon, nitrogen, and oxygen as finished products.

Department's Position:

Because the Department has determined to apply total adverse facts available to Pangang as explained in Comment 1, we need not address this argument. See SAA at 892.

Comment 4: Valuation of Oxygen, Nitrogen, and Argon

Respondent's Argument:

Pangang argues that in the event that the Department continues to value electricity, oxygen, nitrogen, and argon as finished products, the Department should base the surrogate values for these inputs on information on the record provided by Pangang in its July 2, 2002, factors of production submission. Pangang explains that in its July 2 submission it provided price quotes for oxygen, nitrogen, and argon from Bhoruka Gases Ltd. ("Bhoruka"), which is the source of the gas prices used by the Department in the Preliminary Determination. Pangang maintains that the price quotes from Bhoruka represent the best available information on the record because the quotes are more contemporaneous to the POI, compared to the 1996 price list, and because list prices are not representative of the actual negotiated price between the supplier and its customers, which normally include discounts from the list prices. Pangang contends that contrary to petitioners' claims, the Department has consistently used price quotes similar to that provided by Pangang if that information represented "the best available information" (see section 773(c) of the Act) on the record. Citing the preamble to the Department's regulations, Pangang states that the Department's recognition that price quote data may be more appropriate over aggregate reported data is evidenced in the Department's regulations where it elected to drop the preference that the surrogate value be based on "published" information. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366-67 (May 19, 1997) ("Preamble"). Pangang notes that in Manganese Metal From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 66 FR 15076 (March 15, 2001) and accompanying Issues and Decision Memorandum at Comment 3, the Department relied on a single price quote to value the input manganese ore. Pangang also points out that the Department itself has solicited and obtained price quotes to be used as the surrogate value for freight truck costs. Specifically, Pangang explains that in Structural Steel Beams from China Prelim, the Department used a price quote for trucking costs. See Structural Steel Beams from China Prelim at 66 FR 67202.

Pangang argues that the price quote from Bhoruka is publicly available information because the quote is issued to any member of the public. Pangang asserts that if petitioners were truly concerned about the reliability and accuracy of the price information, they had the opportunity to verify the price quote with Bhoruka or obtain a different price quote. Pangang contests petitioners' argument that it is the Department's "established practice" to use the same 1996

price list, arguing that while the Department may develop a reliance on a type of publication or source, it does not reject more contemporaneous information in favor of outdated information from the same source. Finally, Pangang argues that for petitioners to assert that the price quotes are aberrantly low, they must first compare the value to a proper benchmark, which Pangang claims they have not done. Pangang states that petitioners' comparison between the price quote and the price list only serves to underscore the conclusion that the price quote is outdated and unreliable. Consequently, Pangang argues that the Department should reject petitioners' argument and use the Bhoruka price list it provided to value oxygen, nitrogen, and argon.

Arguing that the surrogate value information contained in both the price list and price quotes is for gases in liquid form, Pangang states that the Department should account for the fact that the industrial gases consumed by Pangang were in gas form by adjusting the surrogate values through the formula provided by Pangang in its July 2 submission.

Petitioners' Argument:

Petitioners argue that the Department should reject Pangang's submission of revised surrogate values for oxygen, nitrogen, and argon. Petitioners argue that the price quote submitted by Pangang is not the type of information that may be used by the Department in determining surrogate values. Moreover, petitioners claim that the use of such information would constitute a substantial departure from the Department's practice since 1997 in determining the surrogate values for oxygen, nitrogen, and argon for respondents from the People's Republic of China and other countries for which India has been used as a surrogate.

Citing section 351.408 (c)(1) of the Department's regulations and Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China, 62 FR 61964, 61966 (November 20, 1997) ("C.L. Plate from China"); Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China, 62 FR 9160, 9169 (February 28, 1997) ("Brake Drums and Rotors from China"); and Notice of Final Determination of Sales at Less Than Fair Value: Manganese Sulfate from the People's Republic of China, 60 FR 52155, 52158 (October 5, 1995), petitioners maintain that the Department's regulations and practice specifically provide for it to use publicly available published information to value a respondent's factor of production. Petitioners allege that in contrast to the price list used by the Department in the Preliminary Determination, which was posted on Bhoruka's web site, the revised surrogate values for oxygen, nitrogen, and argon submitted by Pangang are based on a single, non-public email from Bhoruka, which was sent in response to a prior email from Pangang's U.S. counsel. Petitioners contend that the email sent by Bhoruka and the surrogate values derived from therefrom do not constitute publicly available data. Petitioners note that in Brake Drums and Rotors from China, in rejecting the respondents' argument that a particular Indian company produced the subject merchandise, the Department determined that "we have relied on publicly available information instead of private correspondence as the basis for our decision because we normally prefer to rely on publicly available information and consider the contents of the correspondence files of a company, by nature, not to be publicly available information." See Brake Drums and Rotors from China 62 FR at 9168.

Petitioners characterize the email submitted by Pangang as self-serving, incomplete, and unclear on its face, and maintain that it should be rejected by the Department. Petitioners charge that the use of the email and resulting surrogate values would open the factor valuation process to abuse. Also, petitioners allege that the email submitted by petitioners does not contain the complete exchange of correspondence between Bhoruka and Pangang's U.S. counsel. Furthermore, petitioners argue that in contrast to the published price list relied upon by the Department in the Preliminary Determination, the email submitted by Pangang provides only ranges or approximations of prices and refers to the prices set forth therein as "budgetary in nature" and subject to fluctuations based on the actual requirements of the client and the nature and location of the client's business. Finally, petitioners allege that the surrogate values submitted by Pangang are aberrantly low compared to the surrogate values used by the Department for the same inputs in other cases.

Petitioners also argue that beyond the non-public nature of the email submitted by Pangang, the resulting surrogate values proposed by Pangang are inconsistent with the Department's established practice. Petitioners identify the following cases where the Department has relied on the 1996 Bhoruka price list in order to value oxygen, nitrogen, and argon: C.L. Plate from China; Hot-Rolled Steel from China; Structural Steel Beams from China; and Steel Wire Rod from Moldova (see Notice of Preliminary Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Moldova, 67 FR 17401, 17406 (April 10, 2002)).

Petitioners question Pangang's claim that the prices quoted in the email and the prices provided on the price list represent prices for liquid gases. Petitioners contend that while gases can be purchased (or delivered) in either a liquid or gaseous form, when a price is quoted per cubic meter, the quote is for the item in gaseous state. Thus, petitioners maintain that even if the Department were to use these data, no conversion is necessary. Petitioners assert that in every other case where the Department has used this price list, no conversion of the price has been necessary.

Department's Position:

Because the Department has determined to apply total adverse facts available to Pangang as explained in Comment 1, we need not address this argument. See SAA at 892.

Comment 5: Valuation of Electricity

Respondent's Argument:

Pangang argues that in the event that the Department continues to value electricity as a finished product, the Department should base the surrogate value on information on the record provided by Pangang in its July 2, 2002, factors of production submission. Pangang explains that this submission contains information regarding the Indian electricity industry and tariffs.

Pangang argues that the Department should reject the electricity surrogate value it used in the Preliminary Determination which represented the tariff applicable for the industrial sector in

India in 1997. Pangang contends that a report on the Indian power sector, provided by www.IndiaInfoline.com, discloses that the Indian power sector is characterized by high tariffs for the industrial sector, which are intended to cross-subsidize low domestic and agricultural tariffs. Moreover, Pangang states that the report demonstrates that the tariff for the industrial sector in India is grossly aberrational when compared to other developing countries. Pangang points out that two of these countries (Indonesia and the Philippines) have been identified by the Department as being economically comparable with China. Citing the Preamble to the Department's regulations, Pangang maintains that it is the Department's practice to disregard surrogate values that are aberrational. See Preamble 62 FR at 27296, 27366. Citing Notice of Final Determination of Sales at Less Than Fair Value: Crating Monohydrate from the People's Republic of China, 64 FR 71104, 71110 (December 20, 1999), Pangang asserts that to determine whether a value is aberrational, the Department compares the surrogate value to a benchmark U.S. price. Pangang notes that in this case, the information in the Indian sector report shows that the Indian power tariffs are more than 40 percent higher than the U.S. tariff during the same period. Thus, Pangang argues that this comparison clearly demonstrates that the Indian tariffs are aberrational, and that the Department should select a different source to value electricity. Pangang suggests that the Department use an electricity price for Indonesia for 2000 which was reported by www.aseanenergy.org. Pangang claims that this value satisfies the Department's criteria for selecting surrogate values. Alternatively, Pangang maintains that if the Department continues to rely on India as the source of electricity, the Department should select the rate that best represents Pangang's experience. Specifically, Pangang argues that because all of Pangang's electricity comes from a captive source of power, the Department should use the Indian price for captive power as reported in the Indian sector report. Pangang notes that this rate is more contemporaneous than the rate used by the Department in the Preliminary Determination.

Petitioners' Argument:

Petitioners argue that the Department should reject Pangang's claims that the Indian electricity tariffs are aberrational and continue to value electricity using the surrogate value information from the preliminary determination. Citing Notice of Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 7; Heavy Forged Hand Tools from the People's Republic of China, 66 FR 54503, 54504 (October 29, 2001); and Manganese Metal from the People's Republic of China, 66 FR 15076 (March 15, 2001) and accompanying Issues and Decision Memorandum at Comment 1, petitioners claim that in antidumping cases involving China where India is the surrogate, the Department has repeatedly relied on Indian electricity rates. Moreover, in Silicomanganese from China, petitioners state that the Department continued to rely on Indian electricity rates, despite claims by respondents that the Indian government heavily regulated the industry and that there was an over-representation of industrial users. See Silicomanganese from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 64 FR 60784, 60786 (November 8, 1999) and Silicomanganese from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 65 FR 31514 (May 18, 2000) ("Silicomanganese from China"). Petitioners maintain that there is nothing on the record to

"convincingly demonstrate" that the Indian electricity rates are unreliable. First, petitioners claim that the source relied on by Pangang does not indicate a consistent rate for electricity. Petitioners assert that in Silicomanganese from China the Department concluded that because electricity is not a traded good, cross-country comparisons are inappropriate. See id.

Petitioners also argue that the alternative surrogate information from Indonesia provided by Pangang is too vague to be used, noting that the information does not indicate the exchange rate used to convert the Indonesian rupiah into U.S. dollars and there is no indication as to the type of the consumption reflected in the rate. Petitioners also claim that the Department should reject the use of the Indian Infoline as a surrogate. Petitioners explain that in the antidumping investigation of Pure Magnesium in Granular Form from the People's Republic of China the Department rejected the use of Infoline data because it lacked specificity. See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China, 66 FR 49345 (September 27, 2001) and accompanying Issues and Decision Memorandum at Comment 6. Petitioners state that with respect to energy that is self-generated, Infoline states only that there has been an "increased dependence on captive sources of power" which is valued "around 2.5 Rs./unit. In conclusion, petitioners argue that because Pangang has not shown that the Indian electricity rates from Energy Prices and Taxes are unreliable, the Department should continue to value electricity using this source.

Department's Position:

Because the Department has determined to apply total adverse facts available to Pangang as explained in Comment 1, we need not address this argument. See SAA at 892.

Comment 6: Valuation of Hydrogen Gas

Petitioners' Argument:

Petitioners argue that the Department should use commercial hydrogen to calculate a POI-adjusted price for hydrogen gas using price information on the record for various gases. Petitioners claim that Pangang's corrections submitted prior to verification included the addition of hydrogen gas as a factor of production, which petitioners note was not valued in the Preliminary Determination. Petitioners assert that the Department should treat Pangang's self-produced hydrogen in the same manner as it treated Pangang's self-produced oxygen, nitrogen, and argon (i.e., value it as a finished product), and value it based on information contained in Bhoruka's 1996 price list for hydrogen.

Respondent's Argument:

Pangang argues that self-produced hydrogen should be valued using the actual factors of production, or at a minimum, should be valued using the correct form. Pangang states that all hydrogen consumed by Pangang was self-produced in Pangang's integrated production process. Thus, Pangang argues that the Department should value hydrogen using the actual factors of production, rather than as a finished product. Pangang maintains that if the Department

determines to value hydrogen as a finished product, it should adjust for the fact that the surrogate value information on the record is based on gas in liquid form, while Pangang consumed hydrogen in the gas form.

Department's Position:

Because the Department has determined to apply total adverse facts available to Pangang as explained in Comment 1, we need not address this argument. See SAA at 892.

Comment 7 Treatment of Defective Hot-Rolled Sheets

Petitioners' Argument:

Petitioners argue that the Department should value Pangang's consumption of defective hot-rolled sheets as a material input and include it in Pangang's cost of manufacturing. Petitioners note that for the Preliminary Determination, all monthly values Pangang reported for defective hot-rolled sheets were negative, indicating that the quantities generated exceeded the quantities consumed. However, petitioners note that in a subsequent revision there was a net consumption of this material for certain months. Thus, they argue that for the final determination, the Department should treat the consumption of this input as a material input, and value it as defective sheets of iron and steel.

Respondent's Argument:

Pangang argues that inferior hot-rolled products should continue to be excluded from Pangang's cost of manufacturing. Pangang notes that in the Preliminary Determination, the Department did not value inferior hot-rolled products because it determined that they were seconds. Pangang maintains that no adjustment to Pangang's cost of manufacturing is appropriate because the record shows that for certain months during the POI, there was a net consumption of this material. Pangang states that the monthly consumption figures show that inferior hot-rolled products are continuously recycled with the production process and do not entail additional factors of production. Thus, Pangang requests that the Department continue to excluded inferior hot-rolled products from Pangang's cost of manufacturing.

Department's Position:

Because the Department has determined to apply total adverse facts available to Pangang as explained in Comment 1, we need not address this argument. See SAA at 892.

Comment 8: Valuation of Iron Ore

Respondent's Argument:

Pangang argues that the Department should value iron ore based on Indian surrogate values rather than purchase price of imported steel and should value freight using domestic distances. Citing the Verification Report at 6, Pangang claims that the Department has verified that

Pangang had no direct purchases of iron ore from market economy countries during the POI other than for a particular transaction. Given this, Pangang maintains that the Department should not rely on the market economy purchases prices, but rather should rely on the monthly average iron ore price reported by India Infoline. Citing Exhibit 9 of their case brief, Pangang claims that India Infoline is a well-respected source that was used by the Department in Structural Steel Beams from China. Citing Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China, 65 FR 33805 (May 25, 2000) and accompanying Issues and Decision Memorandum at Comment 1, Pangang contends that the Department has repeatedly stated that it does not have an unconditional preference over import or domestic data, absent evidence that one type of prices is distorted in any way. Pangang claims that petitioners have not provided any evidence demonstrating that India Infoline data are distorted, and maintain that Indian import statistics do not show a greater level of detail as compared to India Infoline. Thus, Pangang argues that the Department should use the India Infoline data to value iron ore.

Petitioners' Argument:

Petitioners argue that the Department properly valued iron ore using the purchase price on the record and freight from the port to the factory. Citing 19 C.F.R. 351.408(c)(1), petitioners note that the Department's regulations provide that "where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will use the price paid to the market economy supplier." Moreover, petitioners explain that in Structural Steel Beams from China, the Department reiterated its practice of using market economy import prices to value both domestic and imported inputs "when the market-economy imports are of a meaningful quantity and identical to the input in question." See Structural Steel Beams from China at Comment 10. Petitioners assert that Pangang has provided no reason why iron ore should not continued to be valued using the market-economy price paid by Pangang.

Petitioners state that in the event that the Department determines not to use the invoice price, it should use Indian import statistics to value the input. Petitioners explain that in Hot-Rolled Steel from China the Department used this same source to value iron ore where the Department's valuation was not based on respondent's purchases of the input from market economy countries. See Hot-Rolled Steel from China at Comment 15. Petitioners explain that no matter how the Department values iron ore, it should continue to include the appropriate freight value.

Regarding the surrogate value for iron ore from Infoline, petitioners argue that it should be rejected. Petitioners claim that the Infoline is unreliable because, among other things, it does not specify the sources of its information, clarify whether the data concerns inputs that are imported, and, if so, from which countries, or state whether the costs are reported exclusive or inclusive of taxes. Petitioners assert that because there is more reliable data on the record to value iron ore, the Department should reject the iron ore surrogate value recommended by Pangang. Additionally, petitioners claim that there is a clerical error in the conversion of Pangang's surrogate value into a per metric ton figure.

Department's Position:

Because the Department has determined to apply total adverse facts available to Pangang as explained in Comment 1, we need not address this argument. See SAA at 892.

Comment 9: Valuation of Aluminum

Respondent's Argument:

Pangang argues that aluminum should be valued using the most contemporaneous information available. Pangang notes that in its July 2, 2002, submission it provided monthly weighted-average prices for aluminum for the POI from India Infoline. Pangang claims that petitioners have not provided any evidence demonstrating that India Infoline data are distorted, and maintain that Indian import statistics do not show a greater level of detail as compared to India Infoline. Thus, Pangang argues that the Department should use the India Infoline data to value aluminum.

Petitioners' Argument:

Petitioners argue that Pangang's argument regarding the valuation of aluminum is without merit. Petitioners claim that India Infoline makes no representations or warranties as to the operation of the site, or the information on the site, which petitioners claim it gathers through a network of analysts from unspecified sources. Petitioners maintain that in the Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China, 66 FR 49435, 49345 (September 27, 2001) and accompanying Issues and Decision Memorandum at Comment 6 ("Pure Magnesium from China"), the Department rejected the use of www.indiainfoline.com because the web-site did not provide enough specificity for the Department to determine its appropriateness. Petitioners assert that in Pure Magnesium from China the Department was unable to discern whether the inputs were bought domestically or imported, from which country the inputs may have been purchased, whether the costs were inclusive or exclusive of tax, or any specifications about the inputs. See Pure Magnesium from China. Petitioners state that because the derivation of the Infoline data is not specified, the data raises questions as to their possible spot nature, their inclusiveness, their timeliness, the currency in which they were transacted, and the foreign exchange rates used, and any taxes included. Petitioners note that while in Structural Steel Beams from China the Department relied on Indian Infoline to value natural gas because India Infoline data was the only information available, in this case the Department has data from Indian import statistics. Petitioners argue that the Department has a well-established practice of placing on the record and using values from Indian import statistics. Petitioners note that these values were weighted-average and the Department was able to exclude purchases from market-economy countries. Thus, petitioners argue that the Department should continue to rely on Indian import statistics to value aluminum. Petitioners also allege that Pangang has made a clerical error in its calculation of the aluminum value on a per metric ton basis.

Department's Position:

Because the Department has determined to apply total adverse facts available to Pangang as

explained in Comment 1, we need not address this argument. See SAA at 892.

Comment 10: Valuation of Coal Used to Produce Coke

Petitioners' Argument:

Petitioners argue that the Department should value coal used to produce coke as anthracite coal and as steam coal in the proportion identified at verification Petitioners note that in its February 22, 2002, submission, Pangang stated that it produced coke using steam coal exclusively, while it used other coal only in the sintering process and for blast furnace processes. See Pangang's February 22, 2002, submission at 8. However, citing the verification report, petitioners state that Pangang reported that it used "high quality steam coal (anthracite) (50-55%), medium-quality steam coal (40-45%) and low quality steam coal (0-10%)." See Verification Report at 13. Petitioners note that within Indian import statistics, anthracite coal is identified by a separate HTS code than steam coal. Accordingly, for the final determination petitioners argue that the Department should value 50 percent of Pangang's coal for making coke as anthracite coal, and 50 percent as steam coal.

Respondent's Argument:

Pangang argues that the Department should continue to value all coal consumed by Pangang based on the usage-based categories reported in Indian import statistics. Pangang states that the terms "anthracite" and its counterpart "bituminous" refer to the carbon content of the coal. Pangang claims that these two categories occupy a separate subheading of the import statistics, HTS 270111, from the usage-based categories under HTS subheading 270119 (steam coal, coking coal, and other coal). Pangang argues that absent evidence regarding the carbon content of all coal used by Pangang the Department should continue to value coal based on the usage-based categories in Indian import statistics.

Department's Position:

Because the Department has determined to apply total adverse facts available to Pangang as explained in Comment 1, we need not address this argument. See SAA at 892.

Comment 11: Valuation of Steam Coal

Respondent's Argument:

Pangang argues that the steam coal value used by the Department in the Preliminary Determination is aberrational and should by rejected in the final determination. Pangang notes that the steam coal value it provided in its July 2, 2002, submission demonstrates that the value used by the Department in the Preliminary Determination is unreliable and aberrational. Pangang maintains that the import price is higher than the benchmark U.S. price. Thus, for the final determination, Pangang asserts that the Department should rely on International Energy Agency ("IEA") values it submitted to value steam coal.

Petitioners' Argument:

Petitioners argue that the Department properly valued steam coal using Indian import statistics. Petitioners assert that Pangang's claim that the value used for steam coal was "aberrational" has no merit. First, petitioners note that although the printout from the IEA web-site indicates that it is from "Fourth Quarter 2001," the data with respect to coal are from 1996. Second, petitioners maintain that there is no indication of what the value for the coal includes (e.g., freight, imports from non-market economies). Thus, petitioners conclude that the provided information has little or no reliability concerning the valuation of coal. Petitioners argue that the value for steam coal in Indian import statistics is highly reliable. Petitioners state that the Indian import statistics are contemporaneous with the POI, are exclusive of taxes, and they report imports by country so that imports from non-market economies can be excluded. Accordingly, petitioners suggest that the Department continue to use this source for the Preliminary Determination.

Department's Position:

Because the Department has determined to apply total adverse facts available to Pangang as explained in Comment 1, we need not address this argument. See SAA at 892.

Comment 12: Valuation of Water

Petitioners' Argument:

Petitioners argue that the Department should value water using SAIL's financial statements. Citing Pangang's February 22, 2002, submission at 11, Petitioners explain that Pangang did not report water usage rates as it claimed it received water for free. Petitioners claim that it is the Department's normal practice to value water. Since Pangang's water usage is not on the record, petitioners claim that the Department should value water using information from SAIL's 2000-2001 financial statements. They suggest dividing SAIL's water charges by SAIL's total production of saleable steel.

Respondent's Argument:

Pangang argues that water should not be valued. Pangang notes that while petitioners argue that SAIL's financial statements should not be used to value SG&A, overhead, financial expenses, and profit, petitioners argue that the Department should use these same statements to derive a value for water. Pangang asserts that the Department properly did not value Pangang's water usage because it does not incur any cost for its water. Moreover, Pangang maintains that the cost of water was accounted for as part of the overhead expense. Citing Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 61794 (November 19, 1997), Pangang argues that the inclusion of water as a material input would result in double-counting.

Department's Position:

Because the Department has determined to apply total adverse facts available to Pangang as explained in Comment 1, we need not address this argument. See SAA at 892.

Comment 13: Valuation of Recycled Iron Angle

Petitioners' Argument:

Petitioners argue that the Department should value the product called "recycled iron angle" as Defective Sheets of Iron and Steel, HTS 7204.49.01. Petitioners explain that in the Preliminary Determination the Department allowed Pangang a byproduct credit of $1184.18/MT for "recovered iron angles." Petitioners note that this value is significantly above the highest price received by Pangang for its sales of subject merchandise. Petitioners suggest using the surrogate value for Defective Sheets of Iron and Steel to value the input. Petitioners note that the Department's calculation of recycled hot-rolled steel contained a ministerial error, and provide the corrected value. Petitioners maintain that in the event that the Department does use the same HTS code as used in the Preliminary Determination to value "recycled iron angels," the Department should value these items as a co-product. Citing Elemental Sulphur from Canada; Final Results of Antidumping Finding Administrative Review, 61 FR 8239, 8242 (March 4, 1996), petitioners claim that in cases involving by-products and co-products, the Department considers, among other things, the relative sales value of the product compared to that of all joint products produced during the same time period. Petitioners state that the Department valued the joint products from $1.16/GJ to $11.49/MT, and note that the value for "recycled iron angles" was over 100 times the value of the by-product closet in value. Thus, petitioners argue that the Department should not allow a by-product credit for "recycled iron angles," because it is a co-product.

Respondent's Argument:

Pangang argues that recycled iron angle should not be valued as a different product. Pangang states that the description of the HTS item number used by the Department in the Preliminary Determination matches the product at issue. They note that only a very small amount of recycled iron angle are produced per MT of subject merchandise, and that the overall value of recycled iron angle represents a small portion of the price of subject merchandise. Thus, Pangang argues that the low relative value of recycled iron angle and the fact that Pangang treats it as a by-product demonstrates that it is properly valued as a by-product.

Department's Position:

Because the Department has determined to apply total adverse facts available to Pangang as explained in Comment 1, we need not address this argument. See SAA at 892.

Comment 14: Valuation of SG&A, Interest and Profit

Respondent's Argument:

Pangang argues that SG&A, interest, and profit should be based on the financial data of all major producers in the Indian cold-rolled steel industry. Pangang explains that the overview of the Indian steel industry provided by India Infoline reports that there are six major producers of cold-rolled flat steel products in India: TATA, SAIL, Ispat Industries, Jindal, Uttam Steel, and Bhushan Steel. Pangang notes that in its July 2, 2002, submission it provided the financial data for all of the producers. Pangang claims that using all six producers would alleviate the problem of relying on one or two producers, whose isolate experiences are not representative of the Indian steel industry as a whole and may not represent that experienced by Pangang.

In response to petitioners' contention that the Department should reject the financial statements of Jindal, Ispat Industries, Uttam Steel, and Bhushan Steel because their level of integration may differ from Pangang, Pangang asserts that there is no evidence showing that the overhead, SG&A and profit ratios are affected by the differences in the steel producers' equipment or by the level of integration. Pangang claims that if the Department continues to value all of Pangang's intermediate inputs as finished products, the level of integration would be rendered irrelevant. Pangang maintains that this methodology of valuing the intermediate inputs as finished products negated Pangang's level of integration and created a normal value that reflects the costs of a non-integrated producer. Accordingly, Pangang argues that the financial ratios of less integrated producers are more reflective of the production costs of subject merchandise.

Petitioners' Argument:

Petitioners argue that for the final determination, the Department should use the financial data of only TATA. Petitioners maintain that Pangang's recalculation of the ratios for TATA are incorrect, and the Department should reject the revised calculations of financial ratios for TATA.

With respect to SAIL, petitioners claim that it would not be appropriate to use SAIL's financial data because the financial data were not representative of a healthy steel producer. Petitioners assert that in Hot-Rolled Steel from China, under a virtually identical factual situation, the Department determined to rely only on TATA's financial data for 2000-2001, and reject SAIL's financial data for 1999-2000. See Hot-Rolled Steel from China at Comment 8. Petitioners maintain that in reaching this decision, the Department noted that SAIL did not make a profit and that SAIL had approved a financial and business restructuring plan in February 2000. Petitioners claim that for fiscal year 2000-2001, SAIL also did not make a profit, and the restructuring plan that was required by SAIL's financial problems in 1999-2000 was still required and being implemented with full force in 2000-2001. Petitioners also note that two of SAIL's subsidiaries were identified as sick companies, and that loan waivers continued to be in effect. Petitioners acknowledge that in Structural Steel Beams from China the Department determined to use SAIL's 2000-2001 financial data, finding that the record contained no mention of government restructuring assistance or anything that would indicate that SAIL's financial ratios were skewed. See Structural Steel Beams from China at Comment 4. Petitioners explain that the in Structural Steel Beams from China, the record only contained excerpts from SAIL's financials, while in this case the entire 2000-2001 Annual Report is on the record, which petitioners maintain demonstrates that SAIL was undergoing a massive Government-approved financial and business restructuring program that skews SAIL's financials. Thus, petitioners

argue that SAIL's 2000-2001 financial data cannot be used.

With respect to the use of financial data from Bhushan, Ispat Industries, Jindal, and Uttam, petitioners claim that it would be inappropriate because these companies are not integrated producers. Citing Bulk Aspirin from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 65 FR 33805 (May 25, 2000) and accompanying Issues and Decision Memorandum at Comment 4, petitioners state that the Department has found that "degree of integration is a relevant factor that can affect overhead rates. A fully integrated producer will have an overhead to raw material input ratio that is higher than the same ratio for a non-integrated producer …." Petitioners also note that in Hot-Rolled Steel from China Prelim, the Department declined to use financial information from a mini-mill. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China, 66 FR 22183, 22193. In the instant case, petitioners assert that Jindal and Uttam are re-rollers, not steel producers. Petitioners claim that Ispat Industries has no coke ovens and uses a direct reduced iron/electric arc furnace combination for steelmaking, whereas Pangang and TATA use coke oven/blast furnace/basis oxygen furnace. Finally, petitioners claim that Bhushan is not an integrated supplier as it only has an electric arc furnace, not the coke oven/blast furnace/basic oxygen furnace combination used by TATA and Pangang. Petitioners argue that even if the Department were to consider using the data from these companies, the Department must reject the information because it is from India Infoline and lacks specificity. Moreover, petitioners state that the information Pangang submitted on Bhushan from Infoline is no longer available on the web-site. Thus, petitioners argue that the Department should reject the financial data for Bhushan, Ispat Industries, Jindal, and Uttam.

Department's Position:

Because the Department has determined to apply total adverse facts available to Pangang as explained in Comment 1, we need not address this argument. See SAA at 892.

Comment 15: Inland Freight Distance

Respondent's Argument:

Pangang claims that at verification the Department confirmed the distance between Pangang and the nearest port. Accordingly, Pangang argues that the Department should make this correction for the final determination.

Petitioners' Argument:

Petitioners argue that the while they agree that the freight distance should be corrected based on information obtained at verification, they disagree with the distance provided by Pangang. Citing the Verification Report at 18-19, petitioners maintain that the distance listed on these pages is the correct freight distance, and the distance that the Department should rely on for the final determination.

Department's Position:

Because the Department has determined to apply total adverse facts available to Pangang as explained in Comment 1, we need not address this argument. See SAA at 892.

Comment 16: SG&A Ratio Clerical Errors

Respondent's Argument:

Pangang notes that in its May 7, 2002, letter it alleged that the Department miscalculated the surrogate SG&A ratio by double-counting depreciation. Pangang explains that the Department agreed that a clerical error had been made. Pangang states that in the event that the Department continues to rely on the financial data of only TATA and SAIL, the Department should make this correction for the final determination. Additionally, Pangang maintains that the Department used the incorrect profit figure for TATA in the Preliminary Determination, and should correct this error in the final determination.

Petitioners' Argument:

Petitioners argue that the Department's calculation of TATA's profit before taxes is correct. Petitioners claim that the Department properly subtracted long-term investment profit from the reported profit before taxes. Moreover, petitioners maintain that it was proper for the Department to exclude power cost related to prior years since this cost is not part of TATA's cost for the current fiscal year. Thus, petitioners conclude that the Department appropriately adjusted TATA's profit before taxes, and that no changes to the Department's calculation of profit are necessary.

Petitioners also argue that the Department should include SG&A in the financial expense ratio. Petitioners explain that although the financial expense ratio was calculated using a denominator that included SG&A expense, the Department calculated financial expense by applying the ratio to a base that excludes SG&A expense.

Pangang did not comment on this issue.

Department's Position:

Because the Department has determined to apply total adverse facts available to Pangang as explained in Comment 1, we need not address this argument. See SAA at 892.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation program accordingly. If accepted, we will publish the final results of the investigation and the final weighted-average dumping margins in the Federal Register.

AGREE_____ DISAGREE_____

_____
Faryar Shirzad
Assistant Secretary
for Import Administration

_____
Date